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7 The Honorable John C. Coughenour
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST ENVIRONMENTAL
ADVOCATES, an Oregon non-profit
corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, THE NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION, and THE UNITED
STATES ENVIRONMENTAL
PROTECTION AGENCY, agencies of
the United States of America

Defendants,

and

STATE OF WASHINGTON,

Defendant-Intervenor.

NO. 2:16-cv-01866-JCC

DECLARATION OF BEN RAU IN
SUPPORT OF STATE OF
WASHINGTON'S RESPONSE TO
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT ON CLAIMS TWO
AND THREE AND CROSS-
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
CLAIMS TWO AND THREE

I, Ben Rau, declare under penalty of perjury under the laws of the state of Washington
that the following is true and correct.

1. I am now and at all times mentioned a citizen of the United States and a resident
of the state of Washington, over the age of 18 years, competent to make this declaration, and
make this declaration from my own personal knowledge and judgment.

1 2. I am employed by the Washington Department of Ecology as the Watershed
2 Planning Unit Supervisor with the Water Quality Program. I have been in this position since
3 April 1, 2018. Prior to taking over as the unit supervisor, I was the Section 319 Program
4 Coordinator in the Watershed Planning Unit. I was the Section 319 Program Coordinator for
5 six years and seven months.

6 3. As part of my duties for the Department of Ecology, I am responsible for
7 overall management of the Section 319 Nonpoint Program and administration of the section
8 319 grant from EPA.

9 4. Ecology's Water Quality Program awards funds it receives under section 319 of
10 the Clean Water Act to Indian Tribes, nonprofit organizations, state agencies and local
11 governments to perform nonpoint pollution control projects. The Water Quality Program also
12 uses a portion of the funds it receives to support Program staff. Below are examples of projects
13 Washington has funded with section 319 money between 2011 and 2017.

14 5. The projects Washington funded with EPA's 2011 section 319 grant funds
15 included \$50,442 awarded to the Nisqually Indian Tribe for Phase I of the Ohop Valley
16 Restoration project, \$37,344 awarded to Clark Public Utilities for the Salmon Creek Riparian
17 Restoration project, and \$12,343 awarded to Jefferson County Public Health for the Hood
18 Canal Watershed Clean Water project.

19 6. The projects Washington funded with EPA's 2012 section 319 grant funds
20 included \$238,875 awarded to the Adopt a Stream Foundation for a riparian restoration project
21 on Catherine Creek and a streambank erosion control project on the Little Pilchuck Creek, both
22 in Snohomish County, and \$109,310 awarded to Sound Salmon Solutions to establish a
23 continuous riparian buffer along a 1.5 mile denuded and degraded portion of the Lower
24 Snoqualmie River in King County. The project included livestock exclusion fencing and buffer
25 strips to reduce nutrient flow into the River, reducing fecal coliform inputs from agricultural
26 operations.

1 7. The projects Washington funded with EPA's 2013 section 319 grant funds
 2 included: (1) \$189,868 to the Nisqually Indian Tribe for Phase II of the Ohop Valley
 3 Restoration project in Pierce County, which involved re-meandering 1.4 miles of a stream bed,
 4 reconnecting a floodplain and revegetating over 80 acres of former pasture to restore aquatic
 5 and riparian habitat; (2) \$75,000 to Puget Soundkeeper Alliance to provide technical assistance
 6 and educational tools to assist marinas with certification under the Clean Marina Washington
 7 program; and (3) \$240,000 to Adopt A Stream Foundation for the Thornton Creek
 8 Streamkeepers program which provides door-to-door outreach to streamside landowners and
 9 implements best management practices to reduce non-point source pollution in this King
 10 County waterway.

11 8. The projects Washington funded with EPA's 2014 section 319 grant funds
 12 included: (1) \$249,070 to the Lower Columbia Estuary Partnership to restore native riparian
 13 and wetland vegetation on 30 acres of the La Center Bottoms area along the East Fork of the
 14 Lewis River and two acres of Breeze Creek, both located in Clark County; (2) \$104,728 to
 15 Sound Salmon Solutions to remove invasive plants and plant native trees and shrubs in a 100-
 16 330 foot wide buffer on 8.45 acres of the Stillaguamish River; and (3) \$160,015 to Adopt a
 17 Stream Foundation for a project to restore 12 acres of riparian forest along Munson Creek in
 18 Marysville.

19 9. The projects Washington funded with EPA's 2015 section 319 grant funds
 20 included: (1) \$103,500 to Wild Fish Conservancy for a project to restore Lower Langlois Creek
 21 and 6 acres of the adjacent floodplain within the Snoqualmie River Basin to enhance fish
 22 habitat and water quality by removing invasive vegetation, and planting native shrubs and
 23 trees; (2) \$58,888.89 to King County Water and Land Resources Division to revegetate a
 24 riparian zone in a degraded reach of Newaukum Creek to improve fish and wildlife habitat;
 25 and (3) \$35,882 to Capitol Land Trust to establish a 100 foot riparian buffer on half a mile of
 26 Mima Creek in Thurston County.

1 10. The projects Washington funded with EPA's 2016 section 319 grant funds
 2 included: (1) \$139,300 to the Nooksack Indian Tribe for a project to restore degraded
 3 streamside forests along the South Fork Nooksack River in Whatcom County; (2) \$249,938 to
 4 Stewardship Partners for a project to improve water quality by restoring fish and wildlife
 5 habitat along the mainstem of the Snoqualmie River with four agricultural landowners; and
 6 (3) \$126,910 to Adopt a Stream Foundation for a project to restore approximately 8.8 acres of
 7 riparian vegetation on the Middle Fork Quilceda Creek in Marysville.

8 11. The projects Washington funded with EPA's 2017 section 319 grant funds
 9 included: (1) \$167,670 to the Lower Columbia Estuary Partnership for a project to re-establish
 10 native riparian and wetland vegetation in 4 acres of the Salmon Creek Greenway in Clark
 11 County; (2) \$112,500 to Pacific County Anglers for a project to reconstruct the historic
 12 channel, and plant native species in the riparian area of Stringer Creek in Pacific County; and
 13 (3) \$249,795 to the Skagit Fisheries Enhancement Group to plant 25 acres of riparian buffer
 14 and construct 4,000 feet of livestock exclusion fencing along Skagit River side channels
 15 impacted by livestock grazing and lack of shade.

16 12. The projects listed above are just a sample of the many projects Washington has
 17 funded with the Clean Water Act section 319 funds Washington received from EPA between
 18 2011 and 2017. All funds awarded prior to 2014 have already been spent. Ecology received
 19 \$5,770,000 for the years 2014–2015. As of March 31, 2018, \$350,354.69 is unspent but is
 20 obligated through grant agreements with the nonprofit organizations and local governments
 21 that are performing nonpoint pollution control projects. The 2014–2015 grant closes on June
 22 30, 2018 and I anticipate that the majority of the remaining \$350,354.69 will be spent.
 23 Anything left unspent will be returned to EPA. Ecology received \$5,872,900 for the years
 24 2016–2017. As of March 31, 2018, \$1,961,298.10 is unspent. Of the unspent funds,
 25 \$1,670,297.43 is obligated through grant agreements with the nonprofit organizations, and
 26

local governments that are performing nonpoint pollution control projects, and \$290,998.67 is allocated to support Ecology staff. The 2016–2017 grant closes on June 30, 2020.

13. If Ecology is required to return some or all of the spent funds, Ecology would either have to obtain a legislative appropriation or attempt to recover the money from the Indian Tribes, nonprofit organizations, state agencies and local governments that performed pollution control projects with the funds Ecology awarded between 2011 and 2017. I do not know if either of these options would be successful. If neither of these options are successful, Ecology would likely be forced to repay the funds with money the agency would otherwise use to fund pollution control projects throughout the state of Washington. If Ecology is required to return some or all of the unspent but obligated funds, Ecology would have to attempt to cancel the grant agreements with recipients and de-obligate the grant funds. This would stop the implementation of planned pollution control projects throughout the state of Washington, and would likely mean that the nonprofit organizations and local governments that have grant agreements with Ecology would not be reimbursed for pollution control work they have already completed but have not yet been reimbursed for.

14. If the Court directs EPA to withhold 30% of any Clean Water Act section 319 funds EPA awards to Washington in 2018, Ecology will be forced to significantly reduce the funds Ecology provides to Indian Tribes, nonprofit organizations, state agencies and local governments to perform pollution control projects.

DATED this 11 day of May, 2018, at Lacey, Washington.


BEN RAU

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Washington by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

DATED this 11th day of May, 2018.

/s/ Ronald L. Lavigne
Ronald L. Lavigne, WSBA #18550
Senior Counsel
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